

December 3, 2013

To: The Board

From: Pat Baptiste

RE: Update on the zoning changes to the Chevy Chase Center

I have attached to this memo a copy of the testimony I presented to the County Council last month. Jody Klein worked with me on the testimony and he raised the question of how binding elements should be handled in the rezoning of this property. As a result of his assistance, and a fair amount of effort on my part, the Council staff added language to the rewrite that will protect the Village's interests in maintaining the binding elements. His report is also attached. Yesterday a Council committee (PHED) agreed with this new language in a 3-0 vote. The full Council will take up the issue in late winter.

We still have an issue with the FAR of the property, as outlined in the attached testimony. It now appears that the Council will, after approving the new zoning code, take an additional 6 months to apply the new zones to the various properties throughout the County. This gives us added time to make the case for a reduced FAR density on this property.

All in all, things are breaking our way on this matter.

TESTIMONY OF CHEVY CHASE VILLAGE

ZTA 13-04 AND G-956

NOVEMBER 14, 2013

My name is Patricia Baptiste, 7 Grafton Street, Chevy Chase. I am pleased to appear tonight to present the testimony of Chevy Chase Village where I serve as Chair of the Village Board of Managers. As most of you are aware, Chevy Chase Village is a municipality of 720 households and one commercial property located directly north and east of the redeveloped Chevy Chase Center in Friendship Heights. All of the residential property in the Village is zoned R-60. Our one commercial property is zoned CBD-1.

The Village has two concerns we would like to call to your attention.

The first relates to ZTA 13-04. We are in complete agreement with the many voices you have heard at this hearing and in other communications calling for the code rewrite to retain the current requirements and limit of uses in the R-60 and R-90 residential zones. We oppose the language that would allow matter-of-right non-residential building types in these zones. Heretofore, with the exception of public buildings and religious institutions, all non-residential uses have been required to have the appearance of residential uses. We also are opposed to any non-residential floating zones in the R-60 and R-90 neighborhoods. We continue to have concerns about allowing any residential floating zones in the absence of common sense requirements relating to minimum acreage, road frontage locations, and compatibility with adjacent homes. In addition we ask that the permitted use of farm stands on these small lots be removed. Finally, we are concerned about the issue of livestock and other farm animals being permitted based on the compelling statements of Dr. Ulder Tillman.

Our second area of concern is related to G-956. First, we share the concern of many in the development community that it is unwise policy to combine ZTA 13-04 with the Development Map Amendment process and we ask, at a minimum, that the two actions be severed. Our real preference is that the new zones, most especially the CR zones, be applied ONLY when specifically recommended in a Master or Sector Plan. We fought hard to keep this requirement in the CR zones adopted by this Council several years ago, and there is every reason to believe that in many instances, one of which I detail below, the effect moving forward with mapping these re-zonings now will result in the evisceration of many master plan protections.

Turning to a particular case in point, I have attached to this testimony the several recommended translations of a TSM property directly abutting the Village to the west. Exhibit A shows the Planning Board recommendation for the property (CR-3.0 C-2.5 R-2.5 H-200T) and Exhibit B shows the PHED Committee's recommendation (CR-0.75 C-0.75 R-.05 H-40T). I have also attached (as Exhibit C)

a copy of a request e-mailed two weeks ago to your staff asking for a correction in the PHED recommendation so that the new zone incorporates the actual limits placed on the development of this property in both the Friendship Heights Sector Plan and incorporated in the Development Plan approved by the Council on February 27, 2001. In both of these development is limited to 112,000 square feet on a 4.8 acre parcel which would yield an FAR of 0.55. Moreover in both the Sector Plan and the approved Development Plan the height is specifically limited to two stories on the north end and three stories on the south end of the property, neither of which would necessarily support the 40' height called for in the recommended translation. Silent in the CR standards, but set out with specificity in the development plan, is the location of the buildings on the property and the width approved for each of two buildings. As currently proposed by PHED the FAR limit would support an additional 50,000 square feet of development—in direct conflict with the Sector Plan and the approved Development Plan with its accompanying binding elements. The property is fully developed to the limits set out in both of those documents. If the Council determines to rezone this property to CR it should require that the height and density provisions of the CR zone be consistent with the current approved and completed development.

Even if the proposed CR zone were accurate in reflecting the density, height and use (which as I have shown above—it is not), the CR zone, in its present form, cannot replace the 2001 Council-approved rezoning of this TSM property without taking into account the numerous binding elements contained in the approval. The Hearing Examiner expressly stated in the February 2000 Report and Recommendation:

These binding elements are an integral part of this development plan and have the same force and effect as the standards and specifications set out in the Zoning Ordinance and are binding on the Applicant and all reviewing agencies. The specifications of the development plan must be strictly applied and any deviations must be approved by the District Council by way of the development plan amendment process...

Among the 18 separate binding elements are the following:

- The density limit (112,000 sq. ft.)
- development and maintenance of a green buffer between the Village and the subject property
- specific requirements for a park
- building width and height limits
- taxi and 'Kiss and Ride' locations

Many of the binding elements were included in the development plan to incorporate the recommendations of the Friendship Heights Sector Plan—requirements that were thought, at the time, to be necessary elements as trade-offs and protections for the communities' concerns over development impacts to their neighborhood and to the important limits on public facility impact. How will a CR zone incorporate and reflect these elements?

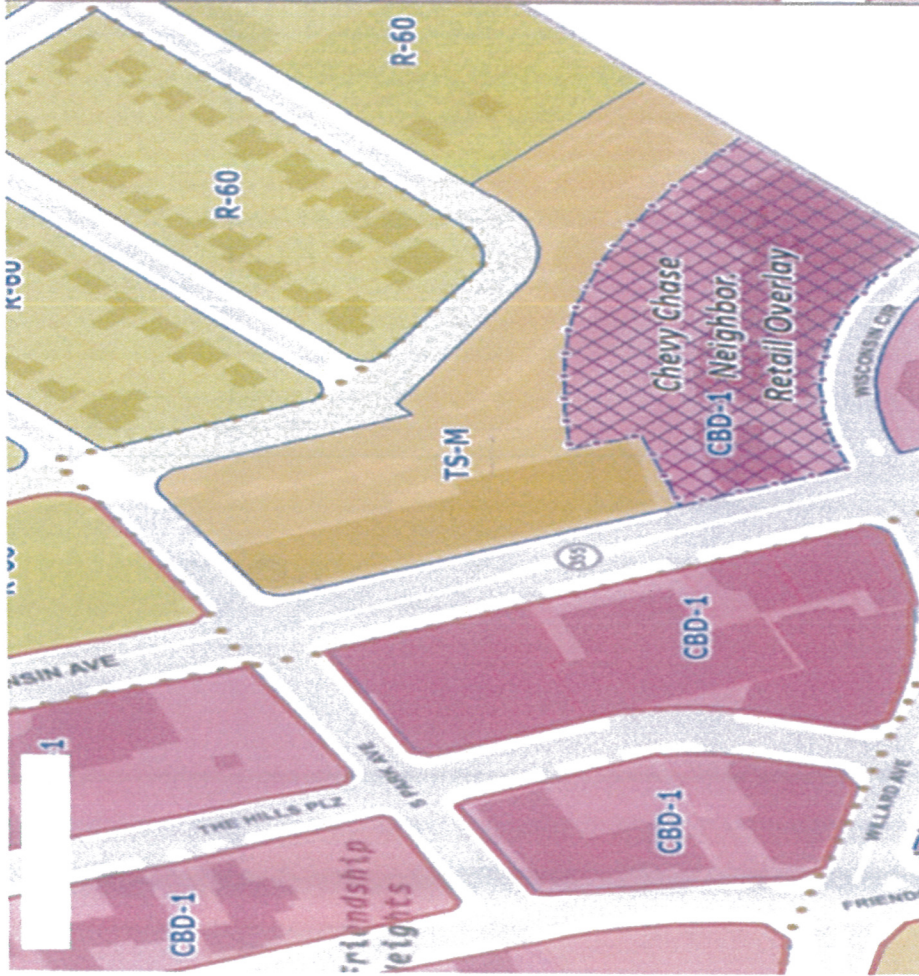
In recent years the binding elements for the taxi stand location, the 'Kiss and Ride' location and the size and use of the park amenity have been modified by amendments to the Development Plan all of which REQUIRED COUNCIL APPROVAL. Who will be tasked with the power to amend the Development Plan's

binding elements if the zone is changed? And further, what will the enforcement mechanism be if this property is rezoned to CR? Will important binding elements be retained and if so how will they be shown? Or, as we are now advised by counsel, will they be automatically extinguished when the property is rezoned in the pending G-956 District Map Amendment. The question of how binding elements here and in other development plans (and covenants recorded in optional method projects) are carried over to the new zones is extremely serious. And, to date, has received almost no attention nor have the negative consequences been the subject of any public PHED discussion.

Finally, the serious, negative results of changing the TSM zone discussed above into a CR zone is just one example of the consequence (intended or otherwise) of swapping zones with inherent incompatibilities. How much wiser to retain the TSM zone here (and other zones elsewhere in the County) and gradually transition to the new zones as part of a Master Planning process.

Exhibit A

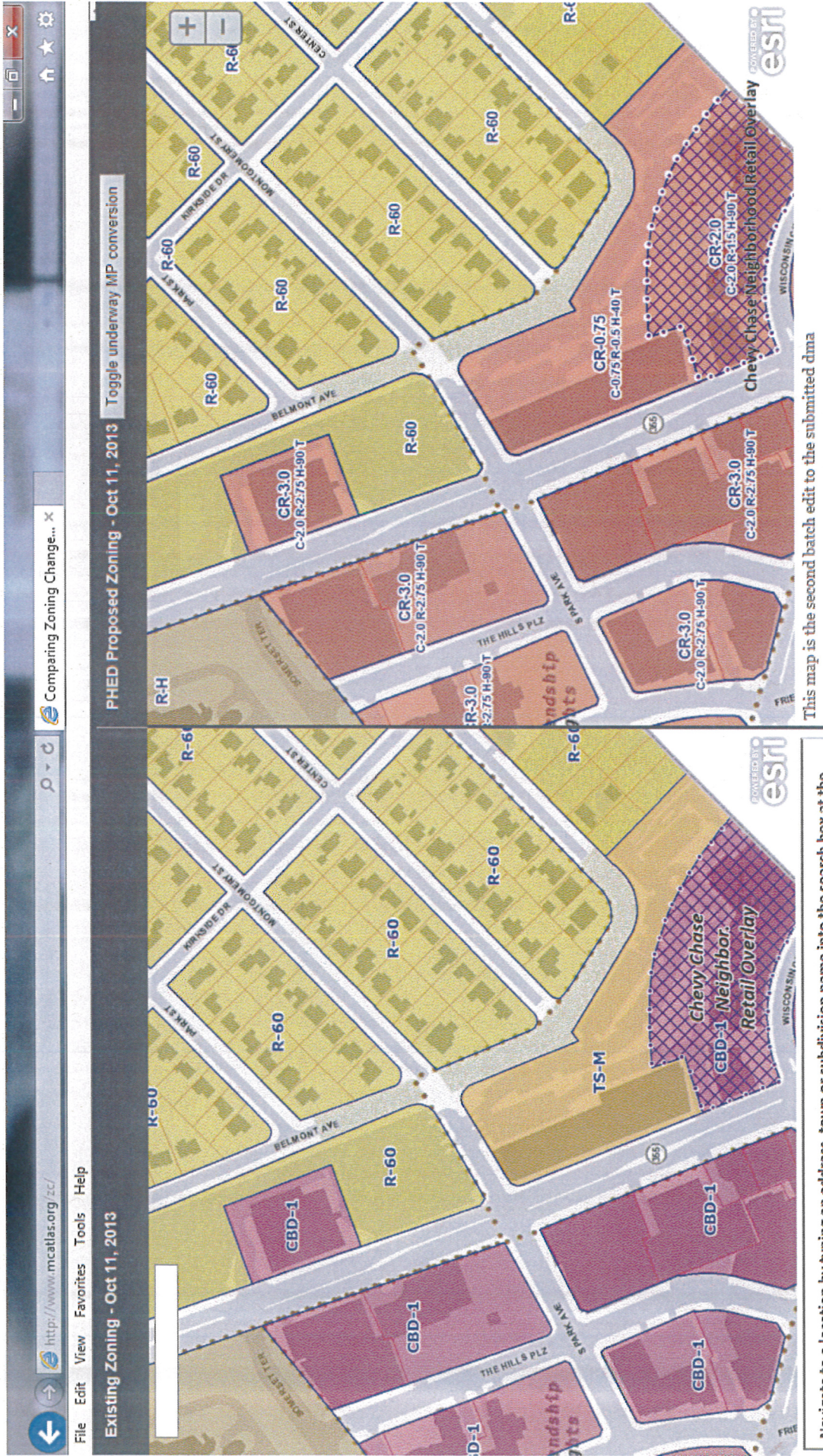
Existing Zoning



Proposed Zoning Toggle underway MP conversion



Exhibit B



Navigate to a location by typing an address, town or subdivision name into the search box at the

Exhibit C

From: Pat Baptiste [<mailto:patbaptiste@verizon.net>]
Sent: Wednesday, October 30, 2013 4:57 PM
To: Johnson, Matt
Cc: nancy floreen; Jeff.Zyontz@montgomerycountymd.gov
Subject: zoning translation for TSM property in Friendship Heights

Matt,

At the direction of Councilmember Nancy Floreen, I would like for you to review your recommendation for the translation of the TSM zoned property at the Chevy Chase Center in Friendship Heights.

This TSM property was the subject of a Development Plan application approved by the Council on Feb. 27, 2001. That action, which is (as you know) a rezoning—and characterized as such by the Planning Board in subsequent action—contained a number of binding elements. Among the many binding elements are two which are relevant to the zoning translation. First, the development was limited to 112,000 sq ft on a property of 4.78 acres—resulting in an FAR of .54. In addition the height of the northernmost building was limited to two stories (and limited to a width of 90 feet), and the height of the southernmost building was limited to three stories (and limited to a width of 120 feet). The square footage is exactly that called for in the Friendship Heights Sector Plan. That plan limited the height of all buildings to three stories with a requirement that the third story be set back from stories one and two.

The property has been completely developed consistent with the zoning limits contained in the Development Plan and subsequent preliminary and site plans.

The translation recommended by the Planning Board and transmitted to the council was CR3, C-2.5, R-2.5, H-200. Subsequently, at the direction of the PHED Committee the translation was changed to CR-0.75, C-0.75, R-0.75, H-40. The FAR 'boost' contained in the translation would allow up to an additional 50,000 sq feet of development under the mater-of-right CR zoning, and it is plainly inconsistent with the zoning imposed by the Council in February of 2001. In addition, the 40' height in the proposed CR zone would allow, as a practical matter, one to two more stories than agreed to by the property owner in the binding elements. Accordingly, neither the FAR nor the height limitation in the proposed CR translation are in accord with the policy the PHED Committee articulated at the September 20th work session which called for the zoning translation to reflect the parameters of zoning approvals—in this case the development approval, project plan approval, and site plan approval.

Representing the adjacent municipality of Chevy Chase Village, we request that your translation recommendation reflect the lower FAR and make the necessary height adjustments as well. In addition we would like to know how the proposed new zone will take into account the many other binding elements which now are attached to the developed property and which afforded protections to the adjacent residential community and without which the current zoning would not have been granted. Moreover, we think that the question of how binding elements on rezoned and developed 'floating zones' raises significant question for other properties throughout the county relating to the limits of converting these properties to the one-size-fits-all CR zones.

We appreciate your attention to these important questions for our community.

Patricia Baptiste, Chair
Chevy Chase Village Board

- **Request to clarify that the Planning Board consideration of public benefits is listed in priority order in the code. Change language to read:**

B. General Public Benefit Considerations

Granting points as a public benefit for any amenity or project feature otherwise required by law is prohibited. In approving any incentive FAR based on the provision of public benefits, the Planning Board must consider **in priority order**:

1. the recommendations and objectives of the applicable master plan; ...

- **Require minimum retail space**

In areas where mixed-use is desired, the maximum density can only be reached by providing mixed-use. Requiring a minimum amount of retail will prevent housing if the required retail cannot be supported by the market.

- **Respect solar rights**

Respecting solar rights would mean that neighboring properties could not shade one another. It would be a major infringement of the ability to build any substantial density. The taller the building, the greater the required setback. Staff does not recommend this change at this time.

25) Grandfathering

- **Retain current binding elements where applicable**

Many floating zones approved by the Council have binding elements that limit the allowed development more than the approved zoning (e.g., lower height, greater setbacks, less floor area, increased screening). All binding elements included in a development plan or schematic development plan must be satisfied in any subsequent sketch plan approval (see 8.3.3.E.3 – page 8-24) and must be satisfied to approve a subsequent site plan.

Under the findings required for site plan approval, the proposed draft states:

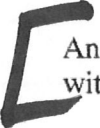
To approve a site plan, the Planning Board must find that the proposed development:

- a. satisfies any previous approval that applies to the site, including any development plan in effect on {effective date minus one};

This will ensure that for any property with a development plan, site plan approval requires that the project satisfy all binding elements that apply to the site prior to adoption of the new code.

Under any other circumstance where a development does not need a sketch plan or a site plan, Staff would propose the following:

Any development allowed on land subject to the binding elements of a Council approved development plan on {effective date minus one} must satisfy those binding elements until the land is subject to a Sectional Map Amendment that implements a master plan approved after {effective date} or is rezoned by Local Map Amendment.

 An alternative addition to the grandfathering provision would be to require all development on property with binding elements to go through site plan (amend the site plan applicability requirements).

➤ **Extend period in which a plan may be amended under the current code**

As drafted, the grandfathering provision would allow an existing building to be rebuilt ANY time in the future. Any approved plan may proceed to construction any time in the future, so long as the plan does not expire. Johns Hopkins, for example, may rely on its approved concept plan for the next 30 years or more. Lastly, any approved plan may be **amended** under the old code for 10 years after the effective date of the new code.

Developers with long term plans want to expand the life of the old code and their rights to get amendments under the old code for 20 to 25 years. The Barnesville School requested an unlimited ability to amend their approval for an unlimited amount of floor area. *If the Council wants to preserve all aspects of the current code for 20 years, staff does not recommend approving the new code.*

Currently, the Planning Board may grant APF approval for as long as 12 years. If the Council wanted to make some accommodation to testimony, it could make the right to amend for the same duration as the project's APF approval.

➤ **Modify the amount of floor area allowed under grandfathering**

Currently, the CR zones allow additions of 10 percent of the existing floor area up to 30,000 square feet under the land's prior zoning. The development community, pressed by gas station owners, would like to be able to expand by a minimum of 1,500 square feet of gross floor area without regard to any percentage limitation. All properties with less than 15,000 square feet of floor area would be allowed to expand by more than 10 percent.

Planning Staff suggests a compromise for very small development to "allow additions of 10% of the existing floor area up to 30,000 square feet under the land's prior zoning except for properties with 2,000 square feet or less of floor area, which may expand up to 30% of existing floor area".

➤ **For single-family zones, allow development on land that was created as part of a lot before 1958 and footprints that satisfy the new zone**

Staff agrees.

➤ **Pre-1958 Parcel**

A detached house on a parcel or part of a lot that has not changed in size or shape since June 1, 1958, exclusive of changes due to public acquisition, may be constructed under its current zoning without regard to the minimum lot width at the front lot line or may be reconstructed either on its current footprint and up to its current maximum building height or in a manner that satisfies the setback, side yard, and height requirements of its current zoning.

➤ **Retain current flexibility for property previously zoned apartment/hotel**